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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,071	02/11/2004	Ronald A. Dingman	TOUG-0002	2107
23550 7590 08/22/2007 HOFFMAN WARNICK & D'ALESSANDRO, LLC 75 STATE STREET 14TH FLOOR ALBANY, NY 12207			EXAMINER OLSON, MARGARET LINNEA	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 08/22/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/776,071

Applicant(s)

DINGMAN ET AL.

Examiner

Margaret L. Olson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 21, 26, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young (US 6,015,072) in view of Roh (US 6,283,347). Young discloses a backpack 14 configured to be worn on the back of an individual with a means for holding the backpack in an upright position 32, a first pocket at 30 attached to the means for holding that is opened from a top of the pocket by fastener 30 when the backpack is in the upright position, and a bottom opening pocket at 80 attached to an exterior side of the large pocket (figure 5). The bottom-opening pocket has an outer side opposite the first pocket at 12, a left and right side (near 80 and 82, figure 4) forming a substantially rectangular holding area along with the outer side, an opening at the bottom of the holding area at 80 when the backpack is in an upright position, and a bottom flap for covering the opening. One means 84 releasably attaches the bottom flap to the left side of the bottom opening pocket (figure 5) so that the bottom flap may be opened. Young does not disclose that the bottom flap is permanently affixed to an outer, left or right side of the bottom-opening pocket. Roh teaches a backpack with a pocket secured to the user's back (figure 1) with a flap 316 permanently attached to the

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outer side of the backpack (figure 7A), and removably attached to the inner, left, and right sides (figure 1). It would have been obvious to one of ordinary skill in the art at the time of invention to permanently attach the flap to the outer side of the bottom-opening pocket of Young in order to allow the pocket to be easily accessed from certain angles.

With respect to claim 26, a second zipper 84 attached the bottom flap to the right side of the bottom-opening pocket.

With respect to claim 27, Young discloses that the bottom-opening pocket includes a top flap at 102 with a means at 46 for releasably attaching the top flap to the outer side of the bottom opening pocket (figure 3, figure 1, figure 5).

With respect to claim 28, the left and right side include padding (column 4, lines 8-14).

With respect to claim 29, Young does not disclose that the bottom flap is permanently affixed to an outer, left or right side of the bottom-opening pocket. Roh teaches a backpack with a pocket secured to the user's back (figure 1) with a flap 316 permanently attached to the outer side of the backpack (figure 7A), and removably attached to the inner, left, and right sides (figure 1). It would have been obvious to one of ordinary skill in the art at the time of invention to permanently attach the flap to the outer side of the bottom-opening pocket of Young in order to allow the pocket to be easily accessed from certain angles.

2. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young (US 6,015,072) in view of Roh (US 6,283,347) and further in view of Rohrbach et al. (US D426951). Young as modified by Roh discloses the structure of

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claim 21, but does not disclose a means for adjustable configuring a horizontal area of the pocket. Rohrbach et al. teach a means for adjusting a horizontal area of a backpack with an adjustable strap and buckle on either side of a pocket (figure 2, figure 3). It would have been obvious to one of ordinary skill in the art at the time of invention to include a means for configuring a horizontal area in the bottom-opening pocket of Ellis in order to securely hold items inside.

With respect to claim 23, Rohrbach et al disclose that the means for adjustably configuring includes a left strap attached to the left side of the pocket, a right strap attached to the right side of the pocket, and a pair of buckles centrally located on the outer side of the pocket that allow the straps to be adjusted.

3. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young (US 6,015,072) in view of Roh (US 6,283,347) and further in view of Lewis (US 5,060,314). Young as modified by Roh discloses the structure of claim 21, but does not disclose that the means for releasably attaching includes hook and loop fasteners. Lewis teaches a bottom opening pocket with a flap covering 68 that attaches to the pocket with hook and loop fastener (figure 3, column 6, lines 18-20). It would have been obvious to one of ordinary skill in the art at the time of invention to use hook and loop fastener to releasably attach the flap to the bottom-opening pocket of Young in order to quickly and easily access the pocket interior.

With respect to claim 25, Lewis teaches a pull cord 70 (figure 3, column 6, lines 25-32) that may extend below the bottom flap.

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4. Claims 30-32 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis (US 3,105,359), in view of Roh (US 6,283,347), and further in view of Rohrbach et al. (US D426951). Ellis discloses a pocket 24 located adjacent to a back of an individual during use with a means for holding the pocket adjacent to the back 12, an inner side adjacent the back, an outer side opposite the back near 24 (figure 2), and a left and right side near 20 and 38 (figure 1) forming a substantially rectangular holding area with the inner and outer sides. A bottom flap 42 covers the opening and may be releasably attached to the bottom-opening pocket. Ellis does not disclose that the bottom flap is permanently affixed to an outer, left or right side of the bottom-opening pocket. Roh teaches a backpack with a pocket secured to the user's back (figure 1) with a flap 316 permanently attached to the outer side of the backpack (figure 7A), and removably attached to the inner, left, and right sides (figure 1). It would have been obvious to one of ordinary skill in the art at the time of invention to permanently attach the flap to the outer side of the bottom-opening pocket of Ellis in order to allow the pocket to be easily accessed from certain angles. Ellis as modified by Roh does not disclose a means for adjustable configuring a horizontal area of the pocket. Rohrbach et al. teach a means for adjusting a horizontal area of a backpack with an adjustable strap and buckle on either side of a pocket (figure 2, figure 3). It would have been obvious to one of ordinary skill in the art at the time of invention to include a means for configuring a horizontal area in the bottom-opening pocket of Ellis in order to securely hold items inside.

With respect to claim 31, the primary reference Ellis discloses that the means for holding comprises a backpack, since it is worn on the back and carried by two shoulder straps.

With respect to claim 32, the primary reference Ellis discloses that the means for holding comprises a vest (figure 1).

With respect to claim 34, Rohrbach et al disclose that the means for adjustably configuring includes a left strap attached to the left side of the pocket, a right strap attached to the right side of the pocket, and a pair of buckles centrally located on the outer side of the pocket that allow the straps to be adjusted.

With respect to claim 35, the primary reference Ellis discloses a top flap 20 for covering a top opening of the pocket with means for releasably attaching the top flap to the left side of the bottom-opening pocket (figure 1, figure 2).

With respect to claim 36, the means 18 for releasably attaching the bottom flap to the pocket includes a pull cord 18 that may extend below the bottom flap.

5. Claims 37, 38, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis (US 3,105,359), in view of Roh (US 6,283,347), and further in view of Wakamatsu (JP 2002-159317A). Ellis discloses a bottom opening pocket 24 with a means for holding the pocket adjacent to the back 12, an inner side adjacent the back, an outer side opposite the back near 24 (figure 2), and a left and right side near 20 and 38 (figure 1) forming a substantially rectangular holding area with the inner and outer sides. A bottom flap 42 covers the opening and may be releasably attached to the bottom-opening pocket. Ellis does not disclose that the bottom flap is attached to the

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permanently affixed to an outer, left or right side of the bottom-opening pocket. Roh teaches a backpack with a pocket secured to the user's back (figure 1) with a flap 316 permanently attached to the outer side of the backpack (figure 7A), and removably attached to the inner, left, and right sides (figure 1). It would have been obvious to one of ordinary skill in the art at the time of invention to permanently attach the flap to the outer side of the bottom-opening pocket of Ellis in order to allow the pocket to be easily accessed from certain angles. Ellis as modified by Roh does not disclose that the pocket is attached to a wheelchair. Wakamatsu teaches a pocket system with shoulder straps attached to a wheelchair having a seat and a backrest (figure 2). It would have been obvious to one of ordinary skill in the art at the time of invention to use the backpack of Ellis on the wheelchair of Wakamatsu in order to allow people to easily carry items while in a wheelchair.

With respect to claim 38, the primary reference Ellis discloses a top flap 20 for covering a top opening of the pocket with means for releasably attaching the top flap to the left side of the bottom-opening pocket (figure 1, figure 2).

With respect to claim 40, Ellis does not teach a zipper for attaching the bottom flap. Roh teaches that the pocket may have a zipper 314 for attaching a pocket flap. It would have been obvious to one of ordinary skill in the art at the time of invention to use a zipper to attach the bottom flap to the bottom-opening pocket of Ellis as modified in order to securely and releasably close the pocket.

6. Claims 33 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis (US 3,105,359), in view of Roh (US 6,283,347), in view of Wakamatsu (JP

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2002-159317A), and further in view of Rohrbach et al. (US D426951). Ellis as modified by Roh and Rohrbach in paragraph 4 discloses the structure of claim 30, but does not disclose that the means for holding includes a wheelchair. Wakamatsu teaches a pocket system with shoulder straps attached to a wheelchair having a seat and a backrest (figure 2). It would have been obvious to one of ordinary skill in the art at the time of invention to use the backpack of Ellis on the wheelchair of Wakamatsu in order to allow people to easily carry items while in a wheelchair.

With respect to claim 39, Ellis as modified by Roh and Wakamatsu discloses the structure of claim 37, but does not teach that the backpack area may be horizontally adjusted. Rohrbach et al. teach a means for adjusting a horizontal area of a backpack with an adjustable strap and buckle on either side of a pocket (figure 2, figure 3). It would have been obvious to one of ordinary skill in the art at the time of invention to include a means for configuring a horizontal area in the bottom-opening pocket of Ellis in order to securely hold items inside.

Response to Arguments

7. Applicant's arguments with respect to claims 21-40 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret L. Olson whose telephone number is (571) 272-9002. The examiner can normally be reached on MTWR, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mlo


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER